



(2) whether OWCP properly denied appellant's request for review of the written record, finding that it was untimely filed pursuant to 5 U.S.C. § 8124(b).

### **FACTUAL HISTORY/**

On February 1, 2021 appellant, then a 30-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that on June 21, 2019 he sustained left arm and shoulder soreness when driving his government vehicle, the rear tire blew, and his vehicle struck a guard rail while in the performance of duty. On the reverse side of the claim form, appellant's supervisor indicated that he was injured in the performance of duty and did not stop work.

In support of his claim, appellant submitted a motor vehicle accident report which related that appellant was a driver involved in an accident that occurred on June 21, 2019 when his vehicle's rear tire popped and the vehicle spun out and struck the guard rail. OWCP also received a police accident report which described the June 21, 2019 motor vehicle incident.

Appellant submitted an after-visit summary dated June 21, 2019, which noted that he was seen by Kwame Amin, a physician assistant, and diagnosed with a left shoulder contusion.

In a development letter dated February 4, 2021, OWCP advised appellant that additional factual and medical evidence was needed and provided him with a questionnaire for his completion. It afforded him 30 days to submit the necessary evidence.

Appellant subsequently submitted a June 24, 2019 narrative statement, wherein appellant described the June 21, 2019 accident. In addition, he explained that he was treated at an emergency room after the accident due to left arm and shoulder soreness.

Appellant submitted a response to OWCP's development questionnaire dated February 5, 2021. He stated that he delayed filing the claim because he did not receive a hospital bill until December 2020. Appellant stated that the immediate effect of his injury was shoulder soreness and that his employer was notified immediately after the injury. He also attested that he did not have any prior injuries.

By decision dated March 15, 2021, OWCP accepted that the June 21, 2019 employment incident occurred, as alleged, but denied appellant's claim as causal relationship between a diagnosed medical condition and the accepted employment incident had not been established. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 15, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. He submitted additional reports related to his emergency room care on June 21, 2019. In a letter dated March 30, 2021, Dr. Ugo Ezenkwele, Board-certified in emergency medicine, related that appellant was seen in the emergency department on June 21, 2019 and was evaluated by Mr. Amin, a physician assistant, and Dr. Christian Barry, an emergency medicine specialist.

By decision dated May 6, 2021, OWCP denied appellant's request for a review of the written record, finding that it was untimely filed.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established is that, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has met his burden of proof to establish a left shoulder contusion causally related to the accepted June 21, 2019 employment incident.

On June 21, 2019 appellant was involved in a motor vehicle accident when his vehicle struck a guard rail. He did not stop work. Appellant reported soreness in his left arm and shoulder. Hospital records indicate that he was seen and evaluated in the emergency room by Mr. Amin, who diagnosed a left shoulder contusion. The diagnosis of contusion was consistent with appellant's physical examination and the mechanism of injury. This evidence is sufficient to meet the standards set forth in OWCP's procedures for accepting a left shoulder contusion as it was a

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<sup>3</sup> *Id.*

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

minor condition identifiable on visual inspection by a lay person.<sup>8</sup> As the evidence of record establishes that appellant's employment incident resulted in a visible injury, the Board finds that he has met his burden of proof to establish a left shoulder contusion causally related to the accepted July 21, 2019 employment incident.<sup>9</sup>

Accordingly, the March 15, 2021 decision is reversed to find that the claim is accepted for a left shoulder contusion. The case will therefore be remanded to OWCP for payment of medical expenses for appellant's diagnosed left shoulder contusion and any attendant disability.<sup>10</sup>

### **CONCLUSION**

The Board finds that appellant has met his burden of proof to establish a left shoulder contusion causally related to the accepted June 21, 2019 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 15, 2021 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 4, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013). See also *A.J.*, Docket No. 20-0484 (issued September 2, 2020); *S.K.*, Docket No. 18-1411 (issued July 22, 2020); *B.C.*, Docket No. 20-0498 (issued August 27, 2020) (the Board accepted lumbar contusion as causally related to the accepted employment incident); *S.H.*, Docket No. 20-0113 (issued June 24, 2020) (the Board accepted a right ankle contusion as causally related to the accepted employment incident); *M.A.*, Docket No. 13-1630 (issued June 18, 2014).

<sup>9</sup> *Id.*

<sup>10</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.